

TOWN OF CONCORD

Section 125 Cafeteria Plan

Premium Only Plan Document

Cafeteria Plan Document

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Premium Only Plan

Introduction

The Employer has adopted this Plan to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing Benefits for those Employees who shall qualify hereunder and their dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs.

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the Benefits which an Employee elects to receive under the Plan be includable or excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

Article I Definitions

1.1 "Administrator" means the individuals or corporation appointed by the Employer to carry out the administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

1.2 "Affiliated Employer" means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 "Benefit" means any of the optional Benefit choices available to a Participant as outlined in Section 4.1.

1.4 "Code" means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 "Dependent" means any individual who qualifies as a dependent under an Insurance Contract or under Code Section 152 (as modified by Code Section 105(b)).

1.7 "Effective Date" means the effective date as specified in Item 2 of the Adoption Agreement.

1.8 "Election Period" means the period immediately preceding the beginning of each Plan Year established by the Administrator for the election of Benefits and Salary Redirections, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.9 "Eligible Employee" means any Employee who has satisfied the provisions of Section 2.1.

However, 2-percent shareholders as defined under Code Section 1372(b) and self-employed individuals as defined under Code Section 401(c) shall not be eligible to participate in this Plan.

1.10 "Employee" means any person who is employed by the Employer, but excludes any person who is employed as an independent contractor. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.11 "Employer" means the Corporation or any such entity specified in Item 1 of the Adoption Agreement, and any Affiliated Employer (as defined in Section 1.2) which shall adopt this Plan; and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan.

1.12 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.13 "Highly Compensated Employee" means, for the purposes of determining discrimination, an Employee described in Code Section 414(q) and the Treasury regulations thereunder.

1.14 "Insurance Contract" means any contract issued by an Insurer underwriting a Benefit.

1.15 "Insurer" means any insurance company that underwrites a Benefit under this Plan.

1.16 "Key Employee" means an Employee defined in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.17 "Participant" means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.18 "Plan" means this instrument, including all amendments thereto.

1.19 "Plan Year" means the 12-month period beginning and ending on the dates specified in Item 3 of the Adoption Agreement. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.20 "Premium Expenses" or "Premiums" mean the Participant's cost for the insured Benefits described in Section 4.1.

1.21 "Salary Redirection" means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1.

1.22 "Salary Redirection Agreement" means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as

of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.23 "Seasonal Employee" means an Employee who is a seasonal employee that works for an Employer that is a seasonal employer, as such terms are defined in M.G.L. c. 151A, section 1.

1.24 "Spouse" means the legally married husband or wife of a Participant, unless legally separated by court decree.

1.25 "Temporary Employee" means an individual that works for an Employer on either a full or part time basis; whose employment is explicitly temporary in nature and does not exceed 12 consecutive weeks during the period from October 1 through September 30.

Article II Participation

2.1 Eligibility

As to each Benefit provided hereunder, any Eligible Employee shall be eligible to participate as of the date he satisfies the eligibility conditions set forth in the policy or Plan providing such Benefit, the provisions of which are specifically incorporated herein by reference. The eligibility requirements above may include an eligibility waiting period that corresponds with (but is no longer than) any waiting period for enrollment in medical care coverage options available under this Plan, but in no event may the eligibility waiting period under this Plan exceed two months for plans offered through the Mass Health Connector.

If a former Participant is rehired during the same Plan Year in which termination of employment occurs, and such former Participant had revoked existing Benefit elections and terminated the receipt of Benefits at the time of termination of employment, then such rehired former Participant shall be prohibited from making new Benefit elections for the remaining portion of the Plan Year.

2.2 Effective Date of Participation

An Eligible Employee shall become a Participant effective as of the later of the date on which he satisfies the requirements of Section 2.1 or the Effective Date of this Plan.

2.3 Application to Participate

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate and election of Benefits form which the Administrator shall furnish to the Employee. The election made on such form shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to execute a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

2.4 Termination of Participation

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) His termination of employment, subject to the provisions of Section 2.5.
- (b) His death; or
- (c) The termination of this Plan, subject to the provisions of Section 8.2.

2.5 Termination of Employment

If a Participant terminates employment with the Employer for any reason other than death, his participation in the Plan shall be governed in accordance with the following:

- (a) With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which Premiums have already been paid.
- (b) This Section shall be applied and administered consistent with such further rights a Participant and his Dependents may acquire pursuant to Code Section 4980B and Section 9.14 of the Plan.

Article III Contributions to the Plan

3.1 Salary Redirection

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election and/or Salary Redirection Agreement with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in family status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 Application of Contributions

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants.

3.3 Maximum Elective Contributions

The maximum amount of elective contributions under the Plan for any Participant shall be the total cost to the Participant for the Coverage Period of the most expensive Optional Benefit Coverages that any Participant could elect.

Article IV Benefits

4.1 Benefit Options

Each Participant may elect to have his full compensation paid to him or elect to have the amount of his Salary Redirections applied to any one or more of the following optional Benefits or any other group insured or self insured Benefit permitted under Code Section 125 and IRS Regulations hereunder if offered by the Employer:

- (1) Health Benefit
- (2) Dental Benefit
- (3) Group Term Life Benefit
- (4) Disability Benefit
- (5) Cancer Benefit
- (6) Vision Benefit
- (7) Accidental Death/Dismemberment Benefit

4.2 Health Benefit

(a) Each Participant may elect to be covered under a health and hospitalization Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) The Employer may select suitable health and hospitalization Insurance Contracts for use in providing this health insurance Benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) The rights and conditions with respect to the benefits payable from such health and hospitalization Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.3 Dental Benefit

(a) Each Participant may elect to be covered under the Employer's dental Insurance Contract. In addition, the Participant may elect either individual or family coverage under such Insurance Contract.

(b) The Employer may select suitable dental Insurance Contracts for use in providing this dental insurance Benefit, which policies will provide uniform Benefits for all Participants electing this Benefit.

(c) The rights and conditions with respect to the Benefits payable from such dental Insurance Contract shall be determined therefrom, and such dental Insurance Contract shall be incorporated herein by reference.

4.4 Group Term Life Benefit

(a) Each Participant may elect to be covered by the Employer's group term life Insurance Contract.

(b) The Employer may select suitable group term life Insurance Contracts for use in providing this group term life insurance Benefit, which policies will provide Benefits for all Participants electing this Benefit on a uniform basis.

(c) The rights and conditions with respect to the Benefits payable from such group term life Insurance Contract shall be determined therefrom, and such group term life Insurance Contract shall be incorporated herein by reference.

4.5 Disability Benefit

(a) Each Participant may elect to be covered by the Employer's disability Insurance Contract.

(b) The Employer may select suitable disability Insurance Contracts for use in providing this disability Benefit. The disability Insurance Contracts may provide for long-term or short-term coverage.

(c) The rights and conditions with respect to the Benefits payable from such disability Insurance Contract shall be determined therefrom, and such disability Insurance Contract shall be incorporated herein by reference.

4.6 Cancer Benefit

(a) Each Participant may elect to be covered by the Employer's cancer Insurance Contract.

(b) The Employer may select suitable cancer Insurance Contracts for use in providing the cancer insurance Benefit, which policies will provide Benefits for all Participants electing this Benefit on a uniform basis.

(c) The rights and conditions with respect to the Benefits payable from such cancer Insurance Contract shall be determined therefrom, and such cancer Insurance Contract shall be incorporated herein by reference.

4.7 Vision Benefit

(a) Each Participant may elect to be covered by the Employer's vision Insurance Contract.

(b) The Employer may select suitable vision Insurance Contracts for use in providing the vision insurance Benefit, which policies will provide Benefits for all Participants electing this Benefit on a uniform basis.

(c) The rights and conditions with respect to the Benefits payable from such vision Insurance Contract shall be determined therefrom, and such vision Insurance Contract shall be incorporated herein by reference.

4.8 Accidental Death/Dismemberment Benefit

(a) Each Participant may elect to be covered by the Employer's accidental death/dismemberment Insurance Contract.

(b) The Employer may select suitable accidental death/dismemberment Insurance Contracts for use in providing the accidental death/dismemberment insurance Benefit, which policies will provide Benefits for all Participants electing this Benefit on a uniform basis.

(c) The rights and conditions with respect to the Benefits payable from such accidental death/dismemberment Insurance Contract shall be determined therefrom, and such accidental death/dismemberment Insurance Contract shall be incorporated herein by reference.

4.9 Nondiscrimination Requirements

(a) It is the intent of this Plan to provide Benefits to a classification of Employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) It is the intent of this Plan not to provide qualified Benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified Benefits shall not include Benefits which (without regard to this paragraph) are includable in gross income.

(c) If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of Employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reject any election or reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any election or reduce contributions or non-taxable Benefits, it shall be done in the following manner. First the non-taxable Benefits of the affected Participant (either an Employee who is highly compensated or a Key Employee, whichever is applicable) who has elected the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has elected the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the Benefit Plan surplus.

Article V

Participant Elections

5.1 Initial Elections

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so before his effective date of participation pursuant to Section 2.2. However, if such Employee does not complete an application to participate and Benefit election form and deliver it to the Administrator before such date, his Election Period shall extend 30 calendar days after such date, or for such further period as the Administrator shall determine and apply on a uniform and nondiscriminatory basis. However, any election during the extended 30-day Election Period pursuant to this Section 5.1 shall not be effective until the first pay period following the later of such Participant's effective date of participation pursuant to Section 2.2 or the date of the receipt of the election form by the Administrator, and shall be limited to the Benefit expenses incurred for the balance of the Plan Year for which the election is made.

5.2 Subsequent Annual Elections

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of Benefits form to be provided by the Administrator, which Benefit options he wishes to select and purchase with his Salary Redirections. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan.

5.3 Failure to Elect

Any Participant failing to complete an election of Benefits form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit option elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

5.4 Change of Elections

- (a) Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if the changes are necessitated by and are consistent with a change in family status which is acceptable under rules and regulations adopted by the Department of the Treasury. Benefit election changes are consistent with family status changes only if the election changes are necessary or appropriate as a result of the family status change. Any new election under this Section 5.4 shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after

the election form is completed and returned to the Administrator. For the purposes of this paragraph, the following events shall be considered examples of a change in family status:

- (1) the marriage or divorce of the Participant;
- (2) the birth or adoption of a child by the Participant;
- (3) the death of the Participant's Spouse or a Dependent;
- (4) the termination or commencement of employment of the Participant's Spouse;
- (5) the switching from part-time to full-time employment status (or from full-time to part-time status) by the Participant or the Participant's Spouse;
- (6) the taking of an unpaid leave of absence by the Participant or the Participant's Spouse; or
- (7) a significant change in health coverage attributable to the Spouse's employment.

(b) If the Premium Expense under a health insurance Benefit provided by an independent, third-party provider under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such health insurance Benefit. Alternatively, if the Premium Expense increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their Premium payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another health Plan with similar coverage. In addition, if the coverage under a health insurance Benefit provided by an independent, third-party provider is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such health insurance Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another health Plan with similar coverage.

Article VI

General Provisions

6.1 Claim for Benefits

Any claim for Benefits underwritten by an Insurance Contract shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

6.2 Non-assignability of Rights

The right of any Participant to receive any reimbursement under the Plan shall not be alienable by the Participant by assignment or any other method, and shall not be subject to the

rights of creditors, and any attempt to cause such right to be so subjected shall not be recognized, except to such extent as may be required by law.

Article VII Administration

7.1 Plan Administration

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive Benefits provided under the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated Participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their Benefits available under the Plan;
- (f) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

7.2 Examination of Records

The Administrator shall make available to each Participant, Eligible Employee, and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

7.3 Payment of Expenses

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated Employees.

7.4 Insurance Control Clause

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of a particular Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the Benefits Participants are entitled to and the circumstances under which insurance terminates.

7.5 Indemnification of Administrator

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

Article VIII Amendment or Termination of Plan

8.1 Amendment

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any Benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with federal, state or local laws, statutes or regulations.

8.2 Termination

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate the Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Contract.

Article IX Miscellaneous

9.1 Plan Interpretation

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 9.12.

9.2 Gender and Number

Wherever any words are used herein in the masculine, feminine, or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.3 Written Document

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Regulations thereunder relating to cafeteria Plans.

9.5 Participant's Rights

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

9.6 Action by the Employer

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

9.7 Employer's Protective Clauses

(a) Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance Premium, if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) The Employer's liability to the Participant shall only extend to and shall be limited to any payment actually received by the Employer from the Insurer. In the event that the full insurance Benefit contemplated is not promptly received by the Employer within a reasonable time after submission of a claim, then the Employer shall notify the Participant of such facts and the Employer shall no longer have any legal obligation whatsoever (except to execute any document called for by a settlement reached by the Participant). The Participant shall be free to settle, compromise, or refuse to pursue the claim as the Participant, in his sole discretion, shall see fit.

(c) The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

9.8 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or

state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

9.9 Indemnification of Employer by Participants

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or social security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any social security tax that would have been paid on such compensation, less any such additional income and social security tax actually paid by the Participant.

9.10 Funding

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but shall instead be considered general assets of the Employer until the Premium Expense required under the Plan has been paid. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

9.11 Governing Law

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the state or commonwealth specified in Item 4 of the Adoption Agreement.

9.12 Severability

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

9.13 Captions

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge, or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

9.14 Continuation of Coverage

Notwithstanding anything in the Plan to the contrary, in the event any Benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B.

